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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 457 OF 2020

Radhabhai Krishnabhai Patel (Since deceased)
Through LRs Leela Ramu Radka Patel & Ors. ...Appellants
Versus
Koyaliben Manganbhai Patel & Ors. ...Respondents

WITH
CIVIL APPLICATION NO. 368 OF 2020
IN
FIRST APPEAL NO. 457 OF 2020

Radhabhai Krishnabhai Patel (Since deceased)
Through LRs Leela Ramu Radka Patel & Ors. ...Appellants
Versus
Koyaliben Manganbhai Patel & Ors. ...Respondents

Mr Mandar Soman, *with Mr Hardik Joshi for the Appellants.*
Mrs Prabha B, *with Mr Omkar Nagwekar for Respondent Nos 10 and 11.*
Mr Vineet Naik, **Senior Advocate**, *with Mr Sukand Kulkarni, Mr Ayaz Bilawala, Mr Yogesh Gaikwad and Mr Yohan Mehta i/b Bilawala & Co. for Respondent Nos 12 and 13.*
Mr Girish P Agrawal, *for Respondent Nos 3A to 3E in IA No 3768/2021.*

CORAM **G.S. Patel &**
 Madhav J. Jamdar, JJ.
DATED: **15th December 2021**

PC:-

1. The following order is by consent of the Appellant, Respondents Nos. 12 and 13 and Respondents Nos. 3(a) to 3(e). They agree that reasons are not required.
2. By consent of these parties, the impugned order dated 8th April 2019 passed by the learned Civil Judge, Senior Division, Dadra & Nagar Haveli, Silvassa below Exhibit 55 in RCS No. 49 of 2012 is quashed and set aside.
3. RCS No. 49 of 2012 is restored to file of the Civil Judge, Senior Division.
4. That suit will proceed to trial on merits. The Plaintiff in the suit (Appellant before us) will be at liberty to file an application for interim relief. The application and the suit will be decided on merits.
5. We, however, clarify that it is open to both sides to rely on the judgment dated 22nd June 2007 in the previous Regular Civil Suit No. 23 of 2004. The parties may rely on this judgment for the facts as these then stood, the findings and conclusions, and the evidence led.
6. We note that Respondent Nos 12 and 13 claim to have subsequently (i.e. after 2007, on 7th September 2011) acquired full rights in respect of immovable property in question from one or more of other Respondents/ Original Defendants. The contesting

Defendants/ present Respondents Nos 12 and 13, agree that they will not raise the plea of *res judicata* before the Civil Judge. Subject to this, all other contentions are expressly kept open.

7. Since Respondents Nos.12 and 13 are subsequent purchasers from the other Respondents, Respondents Nos. 12 and 13 will be defending the suit and not their vendors. Hence, Respondents Nos. 12 and 13 agree that the specific consent of the other Respondents to this order is not required.

8. We note that presently before us are Respondent Nos 10 to 13. There are other Respondents as well. Their contentions are also kept open. Respondent Nos 1, 2, 4 to 9 are absent despite service. Respondent Nos 3(a) to 3(e) are also present before us and have no objection to this order.

9. Interim Application No. 3768 of 2021 for impleading the legal heirs of deceased Respondent No 3 is made absolute. The necessary amendment is to be carried out without need of reverification within one week from today.

10. We make it clear that we have not expressed any opinion on the merits of the dispute.

11. Civil Application No. 368 of 2020 for stay is infructuous and is disposed of accordingly.

12. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)